

FILED

JUN 16 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EDGAR MARTINEZ-CASTILLO,

Defendant - Appellant.

No. 05-30535

D.C. No. CR-05-00050-MO

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Oregon
Michael W. Mosman, District Judge, Presiding

Submitted June 12, 2006 ^{**}

Before: KLEINFELD, PAEZ, and BERZON, Circuit Judges.

Edgar Martinez-Castillo appeals his 37-month sentence imposed following his guilty plea to being found in the United States after illegal re-entry, in

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

05-30535

violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Martinez-Castillo contends that the district court violated his constitutional rights by imposing a sentence in excess of the two-year maximum set forth in 8 U.S.C. § 1326(a) based on a prior conviction that was neither proved to a jury nor admitted during the plea colloquy. This contention is foreclosed by *United States v. Weiland*, 420 F.3d 1062, 1079 & n.16 (9th Cir. 2005), *cert. denied*, 126 S. Ct. 1911 (2006).

AFFIRMED.